IN THE MATTER OF

STEVEN P. PERSKIE, FORMER
JUDGE OF THE SUPERIOR COURT

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NOS. ACJC 2009-003

PRESENTER'S CLOSING BRIEF

Candace Moody, Esq.
Presenter
Advisory Committee on Judicial Conduct

I. INTRODUCTION

This matter was initiated before the Advisory Committee on Judicial Conduct (the "Committee") by Alan P. Rosefielde, Esq., a defendant in the matter of Bruce Kaye, et al. v. Alan P. Rosefielde, et al., Docket No. ATL-C-000017-05 (the "Rosefielde Matter"). See P-1. Respondent presided over the Rosefielde Matter in the Atlantic County Superior Court, Chancery Division, for approximately twenty months between February 2005 and October 2006. See Stipulations at ¶4. As a Chancery Division case, the Rosefielde Matter was to be tried non-jury, thus requiring Respondent to sit as both the judge and jury (i.e. fact-finder) in the case.

Mr. Rosefielde complained to the Committee about Respondent's conduct in respect of the Rosefielde Matter. See P-1; see also P-3. Mr. Rosefielde's counsel, Steven Fram, Esq., a shareholder in the law firm of Archer & Greiner, P.C., submitted additional information and documentation to the Committee, which lent support to Mr. Rosefielde's complaints about Respondent's conduct in the Rosefielde Matter. See P-11.

The Committee conducted an investigation into Mr. Rosefielde's grievance, and on September 9, 2009, issued a Formal Complaint against Respondent charging him with violating Canons 1, 2A, 2B, and 3C(1) of the Code of Judicial Conduct, with violating Rule 1:12-1(f), and with conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of Rule 2:15-8(a)(6).[1] These charges relate to the following conduct:

- **Conflict of Interest/Failure to Recuse**: Respondent presided over the pre-trial proceedings in the Rosefielde Matter, which required Respondent to render decisions on various motions of both a procedural and substantive nature, despite having a conflict of interest with Frank Siracusa, an important witness in the case, whose credibility and conduct Respondent, as the trier of fact, would need to evaluate (Count I);

[1] In accordance with the recent decision of the New Jersey Supreme Court in In re Boggia, ____ N.J. ____ (2010) (slip. op. at 13, fn.1), the charges relating to Respondent's violation of Rule 2:15-8(a)(6) should be dismissed.

- **Lack of Candor**: Respondent testified, under oath, before the New Jersey Senate Judiciary Committee (the "Senate Judiciary Committee") in connection with his reappointment, with tenure, as a Superior Court Judge, in a misleading fashion with respect to the following: (1) his failure to recuse himself from the Rosefielde Matter despite having a conflict of interest with a witness in the case; and (2) his attendance at the trial of the Rosefielde Matter (Count II); and

- **Attendance at Trial of Rosefielde Matter**: Respondent attended the trial of the Rosefielde Matter on two separate occasions despite having previously recused himself from the matter and, during one of those appearances, engaged in a conversation with the plaintiff, Bruce Kaye, and his counsel, in front of Mr. Rosefielde and his counsel (Count III).

On September 24, 2009, Respondent, through counsel, filed his Answer to the Complaint in which he admitted certain factual allegations, denied others, and denied violating the charged Canons of the Code of Judicial Conduct and the New Jersey Court Rules.

On July 15, 2010, Respondent entered into a set of Stipulations with the Presenter in which he admitted the accuracy of a majority of the facts as alleged in the Formal Complaint. The Committee held a Formal Hearing on July 19 and 20, 2010, at which various witnesses testified and exhibits were offered by both the Presenter and Respondent. At the conclusion of the hearing, the Committee, pursuant to Rule 2:15-14(g), instructed the parties to file closing briefs with the Committee. The Presenter files this brief for the Committee's consideration.

The testimony at the Formal Hearing of Mr. Fram, John Slimm, Esq. (co-counsel to Mr. Rosefielde), Mr. Rosefielde, and Respondent, as well as Respondent's stipulations to the accuracy of the facts as alleged, demonstrate, clearly and convincingly, that Respondent engaged in egregious misconduct while a Superior Court judge, which impugned the integrity and impartiality of the Judiciary in violation of Canons 1, 2A, 2B, and 3C(1) of the Code of Judicial Conduct and Rule 1:12-1.

II. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1969. See Stipulations at ¶1. At all times relevant to this matter, Respondent served as a judge in the Superior Court of New Jersey, assigned to both the Civil and Chancery Divisions in the Atlantic-Cape May Vicinage, a position he no longer holds. Id. at ¶2. Respondent retired from his judicial office with the New Jersey Superior Court effective February 1, 2010. Id. at ¶3.

A. Stipulated and Undisputed Facts

The facts in this matter are largely undisputed as they concern Respondent's conduct while in open court or while testifying, under oath, before the Senate Judiciary Committee and are the subject of a set of Stipulations, which were filed with this Committee on July 15, 2010. During the course of the Formal Hearing, additional facts were uncovered and are likewise undisputed.

Notably, the stipulated and undisputed facts include the following:

- Respondent acknowledged his conflict of interest with Frank Siracusa while testifying, under oath, before the Senate Judiciary Committee, and further acknowledged that his conflict of interest with Mr. Siracusa would preclude him from impartially evaluating Mr. Siracusa's credibility as a witness. See Stipulations at ¶24 ("If [Siracusa] were going to be a witness and I had to evaluate his credibility, or if he were going to be a party and interests that he had were at stake, I should not be in the case.").

- One of the issues in the Rosefielde Matter was the termination and subsequent re-issuance of insurance for the corporate plaintiffs with Frank Siracusa, who was a local insurance broker in Atlantic City. Id. at ¶6.

- Both parties identified Mr. Siracusa as a potential witness. Id. at ¶7.

- Respondent failed to disclose to the parties and their counsel in the Rosefielde Matter the full extent of his prior dealings with Mr. Siracusa. Id. at ¶9.

- The limited information Respondent did disclose to the parties and their counsel about his dealings with Mr. Siracusa was provided in a piecemeal fashion over the course of several months, including, in one instance, on the return date of the defendants' Motion for Recusal. Id. at 11(c), 13(d).

- After recusing himself from the Rosefielde Matter for reasons unrelated to his conflict with Mr. Siracusa, Respondent attended the trial of the Rosefielde Matter on two separate occasions. On both occasions, he stayed for approximately one hour. Id. at ¶¶15 – 18

- On his second appearance at the trial of the Rosefielde Matter, Respondent engaged plaintiffs' counsel in conversation during a break in the proceedings. Ibid.

- At the Formal Hearing in this matter, the Committee learned, for the first time, that during his second appearance at the trial of the Rosefielde Matter, Respondent asked for and was handed an exhibit by plaintiffs' counsel, Louis Barbone, Esq. 2T:85-6 to 2T86-1.[2]

- Respondent's testimony, under oath, before the Senate Judiciary Committee regarding his conduct in respect of the Rosefielde Matter did not accurately reflect and was inconsistent with his actual conduct in the Rosefielde Matter. Id. at ¶¶13, 15 – 18, 21 – 27. Respondent reiterated this point during his testimony before this Committee at the Formal Hearing on July 20, 2010. 2T:161-23 to 162-18.

The stipulated and undisputed facts reveal, clearly and convincingly, that Respondent engaged in several significant acts of judicial misconduct both while presiding over the Rosefielde Matter and subsequent to his involvement in the Rosefielde Matter, all of which impugned the integrity and impartiality of the Judiciary in violation of the Code of Judicial Conduct and Rule 1:12-1.

[2] 1T refers to the transcript of the Formal Hearing held on July 19, 2010; 2T refers to the transcript of the Formal Hearing held on July 20, 2010. The number following the "T" refers to the page of the transcript being referenced and the number(s) following the page reference refers to the line(s) being referenced (i.e. "1T7-4" refers to the transcript of February 18, 2010 at page 7, line 4).

B. Conflict of Interest/Failure to Recuse

Respondent has been charged with, among other things, engaging in a conflict of interest by presiding over the pre-trial proceedings in the Rosefielde Matter despite his conflict of interest with Frank Siracusa, an important witness in the case whose conduct and credibility were at issue.

1. Frank Siracusa's Role in the Rosefielde Matter

One of the issues in the Rosefielde Matter, *both* for the plaintiffs and the defendants, concerned the termination and subsequent re-issuance of insurance for the corporate plaintiffs with Frank Siracusa. See Stipulations at ¶6. The defendants in the Rosefielde Matter raised this issue in their Counterclaim. See P-1 at Tab 3 at p. 13. Mr. Rosefielde alleged in his Counterclaim that he was terminated from his position as Chief Operating Officer and General Counsel for the corporate plaintiffs because, among other things, "he recommended that the [corporate plaintiffs] change [their] insurance broker in Atlantic City. Up until mid-2004, the [corporate plaintiffs] . . . used Frank Siracusa as their insurance broker . . . ." 1T27-20-25. When the corporate plaintiffs elected to forego renewing their insurance contracts with Mr. Siracusa, it is alleged that Mr. Siracusa and one of his constituents engaged in illegal activity to win back the insurance business. See P-1 at Tab 3, ¶¶26 – 28. Mr. Rosefielde alleges that he was terminated after he complained to his superior, plaintiff Bruce Kaye, about Mr. Siracusa's conduct. Ibid. Mr. Siracusa's name is specifically referenced in the Counterclaim. Ibid.

Similarly, the plaintiffs in the Rosefielde Matter raised the insurance issue in Count 7 of their First and Second Amended Complaints. See P-1 at Tab 7, ¶41(c,d); see also P-1 at Tab 10, ¶41(c,d). Count 7 of the plaintiffs' First and Second Amended Complaints against Mr.

Rosefielde and the other defendants alleged, among other things, that Mr. Rosefielde acted improperly when he encouraged the corporate plaintiffs to terminate "a long-standing relationship with a local insurance broker." Ibid. The local insurance broker was Mr. Siracusa. See P-11 at p.2.

2. Respondent Admits a Conflict with Siracusa

Respondent does not dispute and in fact testified, under oath, to the Senate Judiciary Committee on October 16, 2008, that he had a conflict of interest with Mr. Siracusa that precluded him from presiding over any case in which Mr. Siracusa was either a party or a witness whose credibility he would need to evaluate. See J-1 [P-4/R-3] at p. 5 ("If [Mr. Siracusa] were going to be a witness and I had to evaluate his credibility, or if he were going to be a party and interests that he had were at stake, I should not be in the case."); see also Stipulations at ¶¶23 -24.

Respondent likewise acknowledged to this Committee during his testimony at the Formal Hearing that he has a conflict of interest with Mr. Siracusa. While discussing the "inaccuracies" of his decision to deny Mr. Rosefielde's Motion for Recusal, Respondent testified, under oath, that he was incorrect in implying to the parties that he would be willing to preside over the Rosefielde Matter if Mr. Siracusa had been a party to the case. 2T185-10-16. Respondent stated: "[I]f [Siracusa] had been a party to the case where claims were brought against him, I wouldn't have permitted myself to be involved . . . ." 2T185-23 to 186-1. Similarly, when questioned about his decision to deny the Motion for Recusal given Mr. Siracusa's role as a witness in the case, Respondent testified that he "said it wrong" to the parties. 2T186-2-7. Despite acknowledging his conflict with Mr. Siracusa, Respondent testified that he believed his conflict with Mr. Siracusa would have been rendered moot if he had granted

Mr. Rosefielde's request for a jury trial, a request that Respondent had previously denied. 2T186-3-7. Respondent stated at the Formal Hearing: "[F]rom my point of view I would have felt no discomfort in sitting there while his credibility was examined by a jury . . . I would not have felt that comfortable . . . if he were testifying before me as a fact finder." (emphasis supplied) 2T187-9-16.

Given Respondent's admission of a conflict of interest with Mr. Siracusa and Mr. Siracusa's role in the Rosefielde Matter as an important witness, it is clear that Respondent should have recused himself from the Rosefielde Matter immediately upon learning of Mr. Siracusa's involvement in the case. His failure to do so in the face of an admitted conflict of interest is a violation of Canon 3C(1) of the Code of Judicial Conduct, as well as Rule 1:12-1, and impugns the integrity and impartiality of the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct.

3. Even Absent Respondent's Admission, His Conflict with Siracusa Was Apparent and Required His Immediate Recusal

The New Jersey Supreme Court recently reviewed the ethical implications inherent in the issue of conflicts of interest and the related issue of whether a judge should recuse himself/herself from a matter. DeNike v. Cupo, 196 N.J. 502, 514 (2008); see also State v. McCabe, 201 N.J. 34, 43 (2010). As framed by the Court in DeNike, the relevant ethical precepts when considering issues of a conflict include:

> [T]he bedrock principle articulated in Canon 1 of the Code of Judicial Conduct that "[a]n independent and honorable judiciary is indispensable to justice in our society." To that end, judges are required to maintain, enforce, and observe "high standards of conduct so that the integrity and independence of the judiciary may be preserved." Ibid.
>
> Judges are to "act at all times in a manner that promotes public confidence," id. Canon 2(A), and "must avoid all impropriety and appearance of impropriety," id. commentary

> on Canon 2 (emphasis added). Indeed, as this Court recognized nearly a half century ago, "'justice must satisfy the appearance of justice.'" State v. Deutsch, 34 N.J. 190, 206 (1961) (quoting Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11, 16 (1954)). That standard requires judges to "refrain ... from sitting in any causes where their objectivity and impartiality may fairly be brought into question." Ibid. In other words, judges must avoid acting in a biased way or in a manner that may be perceived as partial. To demand any less would invite questions about the impartiality of the justice system and thereby "threaten[ ] the integrity of our judicial process." State v. Tucker, 264 N.J. Super. 549, 554 (App. Div. 1993), certif. denied, 135 N.J. 468 (1994).

196 N.J. at 514-515.

The Court in DeNike considered as relevant to the issues of conflicts and recusal two related rules: Canon 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(f), which "directs judges not to sit in any matter 'when there is any . . . reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." Id. at 516. The principles embodied in the Canons of the Code of Judicial Conduct and Rule 1:12-1(f) led the Court in DeNike, supra, to adopt the following standard when considering the need for recusal: "Would a reasonable, fully informed person have doubts about the judge's impartiality?" 196 N.J. at 517.

The Court was clear that "'it is not necessary to prove actual prejudice on the part of the court' to create an appearance of impropriety; an 'objectively reasonable' belief that the proceedings were unfair is sufficient." DeNike, supra, 196 N.J. at 517 (quoting State v. Marshall, 148 N.J. 89, 279, 690 A.2d 1, cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997)); see also State v. Tucker, 264 N.J. Super. 549, 554 (App. Div. 1993) ("There must be an appearance of impartiality which fosters the confidence of litigants in the justice system. Any questions concerning that impartiality threaten the integrity of our judicial process."). In short,

"Judges must avoid actual conflicts as well as the appearance of impropriety to promote confidence in the integrity and impartiality of the Judiciary." DeNike, supra, 196 N.J. at 507.

When the Committee applies this objective standard to the facts present in this case, it is clear that Respondent had a conflict with Mr. Siracusa that required his recusal from the Rosefielde Matter well before October 6, 2006 when he recused himself for reasons unrelated to his conflict of interest. It is not simply that Respondent had and has a long-standing business and personal relationship with Mr. Siracusa dating back thirty-five years, but the depth and breadth of that relationship that creates the very real and reasonable concern that Respondent could not be impartial in a case where Mr. Siracusa's conduct and credibility are at issue.

Respondent's relationship with Mr. Siracusa over the last thirty-five years has taken on a variety of forms, including professional, political and personal:

- Respondent and his family have maintained their personal insurance with Mr. Siracusa for the last thirty-five years (1975 – 2010) (2T50-15 to 2T51-19);

- Mr. Siracusa raised funds for and actively supported Respondent in his campaigns for elected office in 1975, 1977 and 1981 (See Stipulations at ¶9(a); 2T48-14 to 2T50-14);

- Mr. Siracusa served as Respondent's campaign treasurer in 1977 (2T49-6-11; see also P-24);

- Respondent and Mr. Siracusa, along with several other individuals, worked together in connection with the effort to bring legalized gambling to New Jersey in 1976 (2T49-20 to 2T50-5; see also Stipulations at ¶9(c));

- Respondent and Mr. Siracusa shared an interest in a restaurant for approximately three years between 1978 and 1981 (2T53-3-24; see also Stipulations at ¶11(c));

- Mr. Siracusa and Respondent played bridge together on a regular basis for approximately six years beginning in the mid-1990's and extending through the year 2000, which was a mere *five years* before Respondent

presided over the Rosefielde Matter (See P-21 at pp. 25:23 to 26:21[3]; 2T55-6-24); and

- During that six year period, Respondent would, on occasion, play bridge in Mr. Siracusa's home and Mr. Siracusa would, on occasion, play bridge in Respondent's home. (See P-21 at p. 27:3-11).

Despite his firmly rooted professional, political, and personal connections with Mr. Siracusa, Respondent has characterized his relationship with Mr. Siracusa as "historic." The record simply does not support Respondent's characterization. As reflected above and throughout the record, Respondent has maintained his professional connection with Mr. Siracusa for the past thirty-five years, having continuously maintained throughout that time both his and his families' personal insurance with Mr. Siracusa's brokerage office. 2T50-15 to 2T51-19.

Likewise, Respondent has maintained his personal connection with Mr. Siracusa. A mere *five years* before presiding over the Rosefielde Matter, Respondent and Mr. Siracusa were playing bridge together in each others homes. See P-21 at pp. 25:23 to 26:21, 27:3-1; see also 2T55-6-24. As expressed by Mr. Siracusa, he has "never stopped being friendly" with Respondent, whom he still considers a friend after thirty-five years. See P-21 at pp. 12:13-15, 53:9. In fact, when Mr. Siracusa was served with a subpoena by counsel to this Committee during the investigative stage of these proceedings, he *immediately* called Respondent to inquire about this matter. Id. at pp. 48:22 to 51:19; 2T59:25 to 2T60:6. At Respondent's request, Mr. Siracusa faxed to Respondent the subpoena he had received from counsel to this Committee and subsequently sent Respondent a copy of his attorney's letter to counsel to this Committee

[3] References to transcripts from the Rosefielde Matter that have been marked as exhibits will include a reference to the page and line number (i.e. "P-21 at p. 25:23 to 26:21" refers to Presenter's exhibit P-21 beginning at page 25, line 23 *through* page 26, line 21. Similarly, "P-21 at p. 27:3-11" refers to Presenter's exhibit P-21 at page 27, lines 3 *through* 11.).

confirming the date on which Mr. Siracusa would appear pursuant to the subpoena. Id. at pp. 49:19 to 51:19.

Finally, in terms of their political endeavors together, Mr. Siracusa coined himself "a groupie for Judge Perskie" whom he "strongly supported" because he believed Respondent "was entitled to have those [assembly and senate] seats." See P-21 at p. 17:2-10.

A reasonable, fully informed person would certainly have doubts about Respondent's impartiality in presiding over the Rosefielde Matter given the quality and extent of his relationship with Mr. Siracusa and Mr. Siracusa's role as a witness in the case whose conduct and credibility were at issue. Indeed, as reflected in the transcripts of the proceedings in the Rosefielde Matter, Mr. Fram and Mr. Slimm, both of whom are well-respected members of the New Jersey legal community, *repeatedly* questioned Respondent's ability to remain impartial given his long-standing professional, political and personal relationship with Mr. Siracusa. See Stipulations at ¶¶11 – 13; see also P-11, P-18, and P-19. Such doubts and questions created an obvious appearance of impropriety that required Respondent's recusal from the Rosefielde Matter on October 12, 2005 when he purportedly first learned about Mr. Siracusa's involvement in the case, and certainly no later than May 26, 2006 when Mr. Fram initially raised with Respondent his concern about Respondent's ability to remain impartial given his relationship with Mr. Siracusa. See J-5 at p.73:23 to p.74:9. His failure to do so violated Canons 1, 2A, and 3C(1) of the Code of Judicial Conduct and Rule 1:12-1(f).

4. Respondent Failed to Recuse Despite His Conflict with Siracusa

Respondent's acknowledgement of his conflict of interest with Mr. Siracusa, both to the Senate Judiciary Committee on October 16, 2008 and to this Committee at the Formal Hearing on July 19 and 20, 2010, stands in stark contrast to his *repeated* representations to the parties in

the Rosefielde Matter that he did not have a conflict with Mr. Siracusa that would preclude him from assessing Mr. Siracusa's credibility as a witness in the case. Respondent, in fact, *denied* defendants' Motion for Recusal, which was premised upon Respondent's relationship with Mr. Siracusa and the apparent conflict that relationship created for Respondent. See J-7 [P-17/R-14] at pp. 7:23 to 9:13; 1T73:21 to 1T74-9.

Respondent first revealed to the parties in the Rosefielde Matter his relationship with Mr. Siracusa on October 12, 2005, approximately *nine months* after Respondent was initially assigned the case. See Stipulations at ¶8(a); see also Exhibit J-4 at 43:16 – 44:25. On three subsequent occasions, between May 26, 2006 and October 6, 2006, while Respondent was presiding over the Rosefielde Matter, Mr. Rosefielde's counsel, Steven Fram, raised with Respondent his concerns about Respondent's relationship with Mr. Siracusa. See Stipulations at ¶¶11 – 13. On each occasion, Respondent minimized the nature of his relationship with Mr. Siracusa while simultaneously withholding from the parties the full extent of that relationship. Ibid. The scant information Respondent did disclose to the parties about his relationship with Mr. Siracusa was done in a piecemeal fashion over the course of several months and on each occasion Respondent was dismissive of the notion that he had a conflict with Mr. Siracusa.[4] Ibid. Respondent, in fact, told the parties on *several* occasions that he *would* feel comfortable judging Mr. Siracusa's credibility as a witness.

- **October 12, 2005 (8 months post Complaint in the Rosefielde Matter):**
  - During a motion hearing in the Rosefielde Matter regarding a discovery dispute, Respondent disclosed, *for the first time*, that he

[4] While Respondent was able to dispense of the details of his relationship with Mr. Siracusa in a few short sentences when discussing it with the parties to the Rosefielde Matter in 2005 and 2006, it took Respondent twelve pages of testimony to disclose to this Committee during the Formal Hearing the full extent of his relationship with Mr. Siracusa.

knows Mr. Siracusa. See Stipulations at ¶8(a); see also Exhibit J-4 at pp. 43:21 to 44:25.

- Respondent disclosed to the parties that for many years he has obtained and continues to obtain his personal insurance through Mr. Siracusa's brokerage office, and that "many years ago," he and Mr. Siracusa were associated in some of Respondent's "endeavors in public office." Id. at ¶8(b)(c); see also Exhibit J-4 at p. 44:1-9.

- Respondent advised the parties that although he did not know what Mr. Siracusa's role, if any, was in the Rosefielde Matter, he did not perceive that his "historic relationship" with Mr. Siracusa would pose a problem for him as the judge in the Rosefielde Matter. Id. at ¶8(d); see also Exhibit J-4 at p. 44:13-25.

- Respondent **did not** disclose to the parties **at any time** prior to the filing of defendants' Motion for Recusal that:

    - Mr. Siracusa had made monetary contributions to Respondent's campaigns for a seat in the New Jersey Assembly in 1975 and the New Jersey Senate in 1977; See Stipulations at ¶9(a); see also 1T45-18 to 1T46-16, 1T69-8-21;

    - Respondent had appointed Mr. Siracusa as the Treasurer of his Senate campaign in May 1977; Id. at ¶9(b); see also 1T45-18 to 1T46-16, 1T69-8-21; and

    - Respondent and Mr. Siracusa, along with several other individuals, worked together in connection with the effort to bring legalized gambling to New Jersey in the 1970s. Id. at ¶9(c); see also 1T45-18 to 1T46-16, 1T69-8-21.

- On August 8, 2005, three months prior to the October 12, 2005 motion hearing, Respondent presided over plaintiffs' Motion to Dismiss the defendants' Counterclaim, which involved the conduct of Mr. Siracusa. 1T31-25 to 1T33-1.

    - Not only was Mr. Siracusa's name referenced in the plaintiffs' motion papers, but defendants' brief in support of the Motion to Dismiss quoted paragragh twenty-six of the Counterclaim in which reference was again made to Mr. Siracusa. 1T33-2-10. Plaintiffs also attached a copy of the defendants' Counterclaim to their motion papers. Ibid.

- During oral argument on the Motion to Dismiss the Counterclaim, which occurred on August 8, 2005, Respondent indicated to the parties that he had reviewed the materials submitted by the parties in support of and in opposition to the Motion to Dismiss. See J-3 [P-13/R-2] at p. 4:15-22.

- Despite having reviewed the motion papers, which included several references to Mr. Siracusa, Respondent did not disclose to the parties at that time that he knew Mr. Siracusa. 1T35-4-10.

- **May 26, 2006 (1 year and 3 months post Complaint in the Rosefielde Matter):**

  - Mr. Fram raised with Respondent the issue of Respondent's relationship with Mr. Siracusa and questioned whether Respondent, as the trier of fact, would be able to make credibility determinations with respect to Mr. Siracusa. See Stipulations at ¶11(a); see also Exhibit J-5 [P-15/R-7] at pp. 73:23 – 74:9.

  - Respondent disclosed, *for the first time*, that he and Mr. Siracusa, along with many other individuals, shared an interest in a restaurant approximately 30 years earlier. Id. at ¶11(c); see also Exhibit J-5 [P-15/R-7] at p. 74:10-24.

  - In addressing with the parties to the Rosefielde Matter his relationship with Mr. Siracusa, Respondent opined that:

    > There is nothing from any of that that from my point of view requires me to recuse on my own motion. But I'm sure I indicated then, and I'll indicate now, if any party has any concerns or questions about it, I'll deal with it.
    >
    > I don't perceive that there's anything about the nature or extent of my historic relationship with him that would preclude me from making the kind of credibility evaluation of his testimony that I would make of somebody I didn't know.

    Id. at ¶11(d); see also Exhibit J-5 [P-15/R-7] at pp. 74:25 to 75:9.

- **September 8, 2006 (1 year and 8 months post Complaint in the Rosefielde Matter):**

  - Mr. Rosefielde's counsel again raised with Respondent the issue of Respondent's prior and existing business relationship with Mr. Siracusa, whom counsel described at that time as a **"pretty important witness"** (emphasis supplied). See Stipulations at ¶12(a); see also Exhibit J-6 [P-16/R-10] at pp. 23:9 to 24:3.

  - At the time of this hearing, a Motion to Dismiss was pending before Respondent, returnable on October 6, 2006, which sought the dismissal of one of the claims that implicated Mr. Siracusa's credibility. Id. at ¶12(b).

    - Mr. Fram raised his concerns over Respondent's relationship with Mr. Siracusa and Respondent's ability to sit impartially in the Rosefielde Matter at this September 8, 2006 conference because he was "concerned that the relationship that Perskie had with Siracusa might impact how he ruled on the . . . motion and might incline him to dismiss that claim from the case." 1T66-17 to 1T67-3.

  - In response to Mr. Fram, Respondent stated:

    > At the appropriate time, and today isn't it, what somebody's going to need to do is essentially summarize whose witness he would be and what the substance of ... the testimony that he's presenting ... If this is a jury trial and ... if I can't get out of it, the fact that I had and have a relationship with him, wouldn't trouble me in the least. If it's a non-jury trial, and I'm trying it, and his credibility is a factor I would need to determine, that's something I need to think about in whatever the context in which it's presented is.

    Id. at ¶12(c); see also Exhibit J-6 [P-16/R-10] at p. 24:4-15.

  - Respondent described Mr. Siracusa as having been a "very close associate" and "friend" of his in the 1970s and early 1980s when Respondent was involved in politics. Id. at 12(d); see also Exhibit J-6 [P-16/R-10] at p. 25:8-15.

- Respondent also indicated that since the early 1980s, "my only real association with him is that I buy insurance through his office and I see him at lunch a couple of times a month." Id. at 12(e); see also Exhibit J-6 [P-16/R-10] at p. 25:13-15. **This statement is not true.**

- In actuality, Respondent played bridge with Mr. Siracusa for at least six years, beginning in 1994 or 1995 and extending through the year 2000. 2T55-6-24; see also P-21 at p. 26:10-25. These bridge games would sometimes occur in either Mr. Siracusa's house or in Respondent's house. See P-21 at p. 27:3-11.

- Notably, as the record reflects, the last bridge game Respondent played with Mr. Siracusa occurred as recently as the year 2000, which is only five years before Respondent presided over the Rosefielde Matter in February 2005. See P-21 at p. 26:10-25.

- **October 6, 2006 (1 year and 9 months post Complaint in the Rosefielde Matter):**

  - Respondent presided over the motion hearing relating to the defenses' Motion for Recusal, which Respondent denied. See Stipulations at ¶13(a); see also Exhibit J-7 [P-17/R-14].

  - When denying the Motion for Recusal, Respondent stated, on the record, that: "Even if [Siracusa] were to be called as a witness, my relationship with him in the past would not, in my view preclude my making any necessary determinations with regard to his credibility." Id. at ¶13(b); see also Exhibit J-7 [P-17/R-14] at p. 8:8-12.

  - Respondent likewise stated, on the record, that he felt "perfectly comfortable retaining responsibility for the matter even if Mr. Siracusa were to testify." Id. at ¶13(c); see also Exhibit J-7 [P-17/R-14] at p.8:25 to 9:2.

  - Respondent revealed, for the first time, that he occasionally played bridge with Mr. Siracusa until "a few years ago." Id. at ¶13(d); see also Exhibit J-7 [P-17/R-14] at p. 8:20-21.

  - Respondent did not disclose to the parties, however, that the bridge games he occasionally played with Mr. Siracusa continued until the year 2000 and to a lesser degree thereafter or that Mr. Siracusa had played bridge in Respondent's home and Respondent had likewise played bridge in Mr. Siracusa's home. See Exhibit J-7 [P-17/R-14] at 8:20-21.

Respondent's repeated assurances that his relationship with Mr. Siracusa did not present a conflict for him and did not require his recusal from the Rosefielde Matter had the effect of forestalling the defendant's Motion for Recusal, which was eventually filed in September 2006. 1T:52-14 to 1T53-10. When Mr. Fram was asked at the Formal Hearing why he did not request Respondent's recusal on May 26, 2006 after again raising with Respondent his concerns over Respondent's ability to impartially assess Mr. Siracusa's credibility, Mr. Fram testified as follows:

> Judge Perskie was assuring us that he didn't see any difficulty. The way Rule 1:12 works is that the trial court has a responsibility if there are reasons for recusal to recuse on its own motion. There doesn't have to be a formal application, and in some situations a trial judge will say, look, I'm not going to get into the details of my relationship with this witness, but I don't think it's appropriate for me to be involved in the case and they recuse.
>
> But, it's also the responsibility, in my view, for the trial court to make a disclose [sic] so that if the parties disagree with the trial judge's conclusion about recusal, that you can make a motion. And we were assuming, based upon the comments that Judge Perskie had made, that the extent of his relationship with Siracusa was really a past relationship and . . . the current business relationship was minimal . . . . So we were taking him at his word when he was indicating to us that he didn't see a basis for recusal, and we were assuming that he was making a full disclosure.

1T:52-14 to 1T53-10.

When Mr. Fram and Mr. Slimm eventually filed their Motion for Recusal in September 2006, *more than a year and a half* after Respondent had assumed responsibility for the Rosefielde Matter, neither counsel nor the parties knew, even at that time, the full extent of

Respondent's relationship with Mr. Siracusa. See Stipulations at ¶¶ 9, 13; see also 1T45-18 to 1T46-16, 1T69-8-21; 2T55-6-24; 2T48-14 to 2T50-14; P-21 at pp. 25:23 to 26:21 and 27:3-11.

Despite being asked on direct examination, Respondent never explained to this Committee during his testimony at the Formal Hearing his reasons for disclosing his relationship with Mr. Siracusa in a piecemeal fashion to the parties in the Rosefielde Matter. 2T60-11 to 2T61-21. When questioned on cross-examination about the piecemeal manner in which he disclosed his relationship with Mr. Siracusa, Respondent claimed he intended to tell the parties the full extent of the relationship *after* Mr. Fram and Mr. Slimm filed their Motion for Recusal. 2T191-17 to 193-2. Respondent's position in this regard is unreasonable. To permit a judge to withhold from the parties and their lawyers the full extent of the judge's past and current involvement with a party, witness, or lawyer in a case pending before that judge would have the practical effect, as it did here, of undermining the conflicts rules and the Code of Judicial Conduct.

Respondent's failure to fully disclose to the parties his relationship with Mr. Siracusa prejudiced both the plaintiffs and the defendants in the Rosefielde Matter. The lawyers and litigants in the Rosefielde Matter were without the necessary information to determine if a motion for recusal was required at a much earlier point in the proceedings. Moreover, Respondent's conduct placed Mr. Fram in the uncomfortable position of having to inquire *repeatedly* of Respondent about his relationship with Mr. Siracusa and his ability to remain impartial in light of that relationship.

In an apparent effort to downplay the impact of his failure to recuse timely from the Rosefielde Matter, Respondent testified at the Formal Hearing that he made only two substantive rulings while he was involved in the case. 2T63:24 to 2T65:13. Those rulings concerned the

following: (1) Respondent found, as a matter of fact, that Mr. Rosefielde had engaged in the unauthorized practice of law; and (2) Respondent dismissed Count 6 of the plaintiffs' Complaint finding that the unauthorized practice of law, standing alone, does not sustain a claim of legal malpractice. 2T63:24 to 2T65:13.

Respondent, however, disregards the key substantive decision he made in the case, which impacted directly the issue of his conflict with Mr. Siracusa. A month before he recused himself from the Rosefielde Matter for reasons unrelated to his conflict with Mr. Siracusa, Respondent denied Mr. Rosefielde's request to transfer the case to the Law Division and to allow those claims involving Mr. Siracusa to be tried to a jury. See J-6 [P-16/R-10] at pp. 16:18 to 17:10. The defense had filed the Motion to Transfer, in part, to communicate to Respondent that the defense was uncomfortable with Respondent's ability to impartially assess Mr. Siracusa's credibility, but nonetheless appreciated Respondent's assertions that his recusal was not necessary. 1T53-11-18. Respondent's disavowal of this substantive decision at the Formal Hearing on the premise that his denial of the Motion to Transfer was without prejudice and therefore insignificant is specious. 2T72-7-21; 2T77-3-18. Whether he denied the motion with or without prejudice does not change the fact that he made a substantive decision to deny the motion.

Regardless, however, of whether and to what extent Respondent made any substantive rulings while presiding over the Rosefielde Matter, the issue of his conflict with Mr. Siracusa and his need to recuse himself remained. Neither Rule 1:12-1 nor Canon 3C(1) of the Code of Judicial Conduct recognize an exception to the conflicts rules for a judge's purportedly "ministerial" decisions. Cf. In re Newman, 189 N.J. 477 (2006) (publicly admonishing a municipal court judge for arraigning a defendant with whom the judge had a conflict of interest,

thereby declining to excuse the judge's conflict with the defendant on the basis that an arraignment is a "ministerial" act for which the judge does not exercise discretion).

5. Respondent's Defenses

Respondent advances two arguments in defense of his failure to recuse himself from the Rosefielde Matter despite his admitted conflict of interest with Mr. Siracusa, both of which are contradicted by the evidence in the record. First, Respondent claims ignorance with regard to Mr. Siracusa's role as a witness in the Rosefielde Matter. See Respondent's Answer at ¶5. Respondent avers that while he knew Mr. Siracusa *might* be called as a witness in the case, he was unaware that Mr. Siracusa *would* be called as a witness in the case.[5] Ibid. Second, Respondent claims that despite having denied defense counsels' Motion for a Jury Trial on September 8, 2006, he fully intended to grant defendants' request at a later, undisclosed date and thus believed that his conflict with Mr. Siracusa would be rendered moot by the presence of a jury. 2T74-10 to 2T75-3. Neither defense has merit or mitigates Respondent's failure to recuse himself timely from the Rosefielde Matter in the face of an admitted conflict of interest.

a. Siracusa Identified as a Witness

With respect to Respondent's first defense, the record in the Rosefielde Matter establishes, clearly and convincingly, that Respondent was not only advised, on several occasions, that Mr. Siracusa *would* be a witness in the Rosefielde Matter, but that Respondent actually *assumed* when denying the defendants' Motion for Recusal that Mr. Siracusa *would* be a witness in the Rosefielde Matter.

---

[5] Respondent's purported ignorance of Mr. Siracusa's role in the Rosefielde Matter even as late as October 6, 2006 when he denied defendants' Motion for Recusal, is strikingly inconsistent with Respondent's concurrent claim that he knew enough about the case as of August 2006 (the time at which defendants filed their Motion to Transfer the case to the Law Division and for a Jury Trial) to have determined that he would grant defendants' request for a jury trial on a subsequent undetermined date. 2T71-9 to 72-14.

As detailed in subpart B(4) above (pp. 12-17), the record in the Rosefielde Matter is replete with references to Mr. Siracusa's role as a witness in the case. Respondent, in fact, ordered Mr. Siracusa's deposition during the discovery phase of the Rosefielde Matter. See Stipulations at ¶¶6, 7; see also P-11 at Tab A. Moreover, the Motion for Recusal filed in September 2006 and heard by Respondent on October 6, 2006 identified Mr. Siracusa as a *necessary* witness. See P-1 at Tab 72, p. 13 ("[T]he allegations in this case not only require Siracusa to participate as a witness; they also question the propriety of his business practices and call into question whether he, acting with others, engaged in conduct that crossed the line in terms of legality.").

Respondent's ignorance defense rings particularly hollow when this Committee considers Respondent's statements to the parties, on the record, while addressing defendants' Motion for Recusal. Respondent couched his decision to deny defendants' Motion for Recusal on the *assumption* that Mr. Siracusa *would* be a witness at the trial of the Rosefielde Matter. See J-7 [P-17/R-14] at 8:8-12. Respondent told the parties that: "Even if [Siracusa] were to be called as a witness, my relationship with him in the past would not, in my view, preclude my making any necessary determinations with regard to his credibility." Ibid; see also Stipulations at ¶13(b). Respondent remarked further that he felt "perfectly comfortable retaining responsibility for the matter even if Mr. Siracusa were to testify." See J-7 [P-17/R-14] at 8:25 to 9:2; see also Stipulations at ¶13(c). These statements demonstrate, clearly and convincingly, that Respondent's decision to deny the Motion for Recusal was premised not on his misunderstanding of Mr. Siracusa's role as a witness in the case, but rather on his denial of a conflict of interest with Mr. Siracusa; a conflict which Respondent subsequently acknowledged,

under oath, both to the Senate Judiciary Committee on October 16, 2008 and to this Committee at the Formal Hearing on July 20, 2010.

Regardless, however, of whether Respondent understood that Mr. Siracusa *would* be a witness or merely that he *might* be a witness, once Respondent was informed of the possibility that Mr. Siracusa would play a role in the case or that Mr. Siracusa's conduct would be at issue in the case, Respondent was obligated to gather all of the information necessary with respect to Mr. Siracusa's involvement in the case to determine if recusal was necessary. See Canon 3C(1) of the Code of Judicial Conduct; see also Rule 1:12-1. As the record reveals, Respondent not only failed to gather the information necessary to make an informed decision regarding the necessity of his recusal, but he continually deferred the issue of his recusal for a year (October 2005 – October 2006) until Mr. Rosefielde's counsel was forced by Respondent's inaction to file a Motion for Recusal. See Stipulations at ¶¶ 8 – 13.

b. A Jury Would Not Mitigate Respondent's Conflict With Siracusa

With respect to Respondent's second defense, it matters not whether the Rosefielde Matter was to be tried to Respondent as the fact finder or to a jury. Rather, as noted by Justice Handler during the Formal Hearing in this matter, issues can arise during the course of a trial, other than those relating to a witness's credibility, for which Respondent as the trial judge would need to render a decision that would impact a witness's standing and interest. 2T187-25 to 2T188-3. The illustrative examples cited by Justice Handler included motions to strike testimony and the inadmissibility of hearsay statements, both of which may implicate the witness with whom the judge has a conflict and for which the judge would need to render a decision despite the presence of a jury. 2T188-4-10. Inexplicably, although raising the issue of a potential jury trial as a defense to these disciplinary charges, Respondent nonetheless

acknowledged the accuracy of Justice Handler's perception that Respondent's conflict with Mr. Siracusa would remain an issue requiring Respondent's recusal even if the Rosefielde Matter had been tried to a jury. 2T187-17 to 2T189-14.

C. Lack of Candor

Respondent has also been charged with a lack of candor while testifying under oath to the Senate Judiciary Committee about his conduct in the Rosefielde Matter, which impugned the integrity of the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct.

Respondent concedes that his testimony, under oath, to the Senate Judiciary Committee on October 16, 2008 regarding his conduct in the Rosefielde Matter did not accurately reflect and was inconsistent with his actual conduct in that matter. 2T:161-23 to 162-18; see also Stipulations at ¶¶22-27. A comparison of Respondent's statements to the parties in the Rosefielde Matter on October 6, 2006 with Respondent's testimony to the Senate Judiciary Committee on October 16, 2008 demonstrates, clearly and convincingly, the inconsistencies between these two statements. See Power Point Comparison Chart, annexed hereto at Tab 1.

In his defense, Respondent avers that he had a "faulty" memory and "simply said it wrong," but that he "had no intention" to mislead the Senate Judiciary Committee. 2T162-24 to 2T163-2; 2T164-4-6. Regardless of Respondent's intent, the record evinces, clearly and convincingly, that despite having notice of Mr. Rosefielde's complaint to the Senate Judiciary Committee, Respondent made no effort to ensure that his sworn testimony was accurate and he took no measures subsequent to his testimony to correct the misstatements he made, under oath, to the Senate Judiciary Committee. See In re Blackman, 124 N.J. 547, 552 (1991) (finding that judge's conduct, not his intent, is at issue in judicial ethics proceedings).

The Senate Judiciary Committee was alerted to Respondent's conduct in the Rosefielde Matter by Mr. Rosefielde who wrote to the Chairman of the Senate Judiciary Committee on October 10, 2008 in connection with Respondent's reappointment, with tenure, as a Superior Court Judge. See P-2. Mr. Rosefielde attached to his letter a copy of the grievance he had filed against Respondent with this Committee. Id. Respondent concedes that prior to testifying before the Senate Judiciary Committee on October 16, 2008 he had received a copy of Mr. Rosefielde's letter to the Senate Judiciary Committee. 2T164-7-11. Respondent likewise concedes that he knew he would be questioned by the Senate Judiciary Committee about Mr. Rosefielde's allegations. 2T164-12-16.

Nonetheless, Respondent insists he did nothing to prepare for his testimony to the Senate Judiciary Committee and instead relied on his memory, which he now admits was "faulty" in all material respects except one. 2T164-17 to 2T166-7. Respondent asserts that he was accurate in his testimony to the Senate Judiciary Committee regarding the second date on which he attended the trial of the Rosefielde Matter. 2T165-25 to 2T166-7. Respondent would have this Committee believe that while he was unable to accurately remember his decision on a Motion for Recusal in a matter that generated press coverage (R-13) and he was unable to remember the real reason why he left the courtroom after his first appearance at the trial of the Rosefielde Matter (Stipulations at ¶¶25-27; see also 2T151-3 to 2T152-21), he was nonetheless able to accurately remember the second date on which he appeared at the trial of the Rosefielde Matter more than two years earlier.

On October 17, 2008, a *day* after Respondent testified before the Senate Judiciary Committee, he was asked by this Committee to respond, in writing, to Mr. Rosefielde's allegations of misconduct and was provided with copies of the transcripts from the Rosefielde

Matter at which his conflict of interest with Mr. Siracusa was discussed. See P-7. In his written submission to this Committee, dated October 22, 2008, *six days* after Respondent testified before the Senate Judiciary Committee, Respondent states that "to the extent . . . [he] can recall" the transcripts from the Rosefielde Matter "accurately reflect the proceedings on the dates in question."[6] See P-8 at p. 2.

Given that the transcripts from the Rosefielde Matter differ entirely from Respondent's testimony to the Senate Judiciary Committee, it appears from Respondent's written submission to this Committee that his recollection about his conduct while presiding over the Rosefielde Matter changed substantially between October 16, 2008 when he testified to the Senate Judiciary Committee and October 22, 2008 when he wrote to this Committee. However, at no point subsequent to his review of the transcripts from the Rosefielde Matter did Respondent alert the Senate Judiciary Committee about his "faulty" testimony.

Respondent's inaccurate testimony, under oath, to the Senate Judiciary Committee coupled with his failure to correct the record after subsequently learning of the inaccuracies in his testimony demonstrates a lack of candor that impugns both his integrity and that of the Judiciary, demonstrates poor judgment and undermines the public's confidence in the integrity of the Judiciary in violation of Canons 1 and 2A of the Code of Judicial Conduct for which public discipline is necessary.

D. Respondent's Attendance at the Trial of the Rosefielde Matter

Respondent has also been charged with demonstrating or creating the appearance of an interest in or support for the plaintiffs in the Rosefielde Matter in violation of Canons 1, 2A and

---

[6] In his written submission to this Committee, Respondent denies any knowledge of Mr. Rosefielde's ethics grievance. See P-8. Respondent, however, admits to receiving a copy of Mr. Rosefielde's letter to the Senate Judiciary Committee to which Mr. Rosefielde's ethics grievance was attached and in which Mr. Rosefielde referenced his ethics grievance. See P-2.

2B of the Code of Judicial Conduct by attending the trial of the Rosefielde Matter on two separate occasions after having recused himself from the matter and on one of those occasions engaging plaintiffs' counsel in conversation.

1. Respondent Admits His Attendance at the Trial

Respondent admits that following his recusal from the Rosefielde Matter he attended the trial on two separate occasions in May 2007 and remained there for approximately one hour on each occasion. See Stipulations at ¶¶15-18. Respondent likewise admits that on his second appearance at the trial he spoke with plaintiffs' counsel during a break in the proceedings. Id. at ¶18. At the Formal Hearing, the Committee also learned, *for the first time*, that during his second appearance at the trial Respondent asked for and was handed an exhibit by plaintiffs' counsel, Louis Barbone, Esq. 2T:85-6 to 2T86-1. Respondent did not disclose this fact to this Committee either in his written comments, which were submitted prior to the issuance of the Formal Complaint, or in his Answer to the Formal Complaint. See P-8; see also Respondent's Answer.

2. The Impact of Respondent's Attendance at the Trial on the Litigants and the Lawyers in the Rosefielde Matter

Respondent's attendance at the trial of the Rosefielde Matter had a significant impact on Mr. Rosefielde and his counsel. With respect to Respondent's first appearance, Mr. Fram testified that he, his co-counsel Mr. Slimm, and Mr. Rosefielde were "very surprised" to see Respondent in the courtroom. 1T87-8-9. Mr. Fram, in fact, made a note of Respondent's first appearance in his trial notebook. See P-12 at ACJC0035. Not only did Respondent's first appearance in the courtroom surprise Mr. Rosefielde and his counsel, it also impacted the manner in which Mr. Rosefielde and his counsel proceeded with their defense. 1T89-3-6. Mr. Fram testified that he, Mr. Slimm and Mr. Rosefielde were "concerned that Judge Perskie's

appearance in the back of the courtroom was a show of support . . . for Siracusa . . ., and the plaintiff's case, and . . . were demoralized. [They] began to talk, at that point in time, about whether [they] should call Siracusa . . . as [a] witness[.]" 1T90-6-11.

When Respondent attended the trial a second time and engaged plaintiffs' counsel in conversation during a break in the proceedings, Mr. Rosefielde remarked that the case was "fixed" and that the defense had "lost the case." 1T97-12 to 1T98-17; 1T144-8-12. Mr. Fram responded to Mr. Rosefielde by saying: "[T]he case going forward was an exercise in damage control . . . we're going to get hit here to some degree. I don't think there's any chance of winning on the counterclaims. The question is, how bad do we get hit? And we, obviously, need to defend the claims against us, but in terms of pursuing the counterclaims, . . . we all realized it was a lost cause. . . ." 1T97-18-25. Believing that the case was fixed, the defense decided to avoid incurring more in litigation costs and withdrew the trial subpoena they had previously issued to Mr. Siracusa. 1T97-12 to 1T98-17; 1T144-21 to 1T145-5; see also P-11 at subpart E. Subsequently, at the conclusion of the trial, Mr. Fram and Mr. Slimm filed a Motion for a New Trial on behalf of the defendants. Id.

Canon 1 of the Code of Judicial Conduct requires judges to uphold the integrity and independence of the judiciary. Canon 1 "explains that '[a]n independent and honorable judiciary is indispensable to justice in our society.' For that reason, Canon 1 also explains that '[a] judge should participate in establishing, maintaining, and enforcing and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.'" In re Mathesius, 188 N.J. 496, 520 (2006) (internal citations omitted).

Canon 2A requires judges to respect and comply with the law and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Code

of Judicial Conduct, Canon 2A. The Commentary to Canon 2 recognizes that "[p]ublic confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny." Code of Judicial Conduct, Canon 2, Commentary. Canon 2B prohibits a judge from lending the prestige of his office to advance the private interests of others.

The fact that Respondent gave the appearance of having a personal interest in the Rosefielde Matter and of supporting the plaintiffs' position, as is apparent from the testimony of Mr. Fram and Mr. Rosefielde, demonstrates a violation of Canons 1, 2A and 2B of the Code of Judicial Conduct. "[T]he canons evidence concern not only for the reality of judicial integrity, but for the appearance of that reality. It is obvious from the canons of the *Code of Judicial Conduct* that integrity — in both actuality and appearance — can be maintained only if judges demonstrate probity, impartiality, and diligence." In re Seaman, 133 N.J. 67, 96 (1993).

Respondent's purported lack of intent to create such an appearance neither mitigates nor excuses his judicial misconduct. In re Blackman, supra, 124 N.J. at 552 (finding that Respondent's conduct not his intent is at issue in judicial ethics proceedings). As the Supreme Court noted in Blackman, supra, Respondent must realize that members of the public cannot know Respondent's subjective motives for his conduct and may, as happened here, "put a very different cast" on Respondent's behavior. 124 N.J. at 551. "As a judge, respondent had a duty to foresee that his actions might be open to criticism by the press or members of the public. Even if such criticism might be a misinterpretation of his motives, respondent nonetheless had an obligation to avoid any conduct that might lead to such criticism." Id. at 552.

Rather than acknowledge the impropriety of his conduct in attending the trial of the Rosefielde Matter on two separate occasions, Respondent chose at the Formal Hearing to malign

the integrity of Mr. Rosefielde and Mr. Fram by accusing them of having an "agenda." 2T170-4-16. Respondent's failure to appreciate the impropriety of his conduct, even in the face of these ethics proceedings, demonstrates an inability on his part to appreciate his obligation under the Code of Judicial Conduct to maintain the integrity and impartiality of the Judiciary and constitutes an aggravating factor sufficient to increase the quantum of the recommended discipline. In re Seaman, 133 N.J. 67, 98-99(1993) (citations omitted); see also In re Subryan, 187 N.J. 139, 154 (2006) (citations omitted).

3. Respondent's Defenses

While Respondent admits to being in the courtroom on two occasions and to speaking with plaintiffs' counsel on the second occasion, he disputes the date on which he appeared for a second time and the allegation that he engaged in a substantive conversation with plaintiffs' counsel during his second appearance at the trial. 2T152-25 to 2T153-4.

a. Respondent's Second Appearance at the Trial

Mr. Fram and Mr. Rosefielde testified, unequivocally, that Respondent appeared at the trial for a second time on May 21, 2007 while the plaintiff, Bruce Kaye was on the witness stand. 1T93-12 to 2T94-17; 2T141-23 to 2T143-25. Respondent and his witnesses (Edwin Jacobs, Esq., Louis Barbone, Esq., and Carl Poplar, Esq.) claim that Respondent appeared for a second time at the trial on May 22, 2007 while plaintiffs' expert, Carl Poplar, Esq., was on the witness stand. 2T81-21 to 2T82-15; 2T98-6-18; 2T152-25 to 2T153-4.

Clearly, the date on which Respondent attended the trial for a second time has no bearing on this Committee's consideration of the propriety of Respondent's initial decision to attend the trial of the Rosefielde Matter after having recused himself. The only import, if any, to the

second date on which Respondent appeared at the trial pertains to the accuracy, or lack thereof, of Respondent's testimony to the Senate Judiciary Committee on this discrete issue.

In this regard, Respondent's claim that he testified truthfully to the Senate Judiciary Committee about the second date on which he appeared at the trial is in dispute and was the subject of much testimony at the Formal Hearing. The record demonstrates that Mr. Fram's and Mr. Rosefielde's testimony has a greater indicia of credibility than does Respondent's testimony or that of Respondent's witnesses for several reasons:

- Both Mr. Fram and Mr. Rosefielde have never wavered from their testimony on this issue.
    - On May 28, 2007, *five days* after Respondent's second appearance at the trial, Mr. Fram and Mr. Rosefielde drafted Mr. Rosefielde's Certification in Support of a Motion for a New Trial in which they referenced May 21, 2007 as the second date on which Respondent attended the trial. 1T98-18 to 1T99-9.
    - On June 18, 2007, the *week* in which the Rosefielde trial ended, Mr. Fram wrote a letter to the trial judge, Judge Nugent, in which he referenced May 21, 2007 as the second date on which Respondent appeared at the trial. 1T103-6 to 1T104-14; See P-25.
    - On July 30, 2007, Mr. Fram filed Mr. Rosefielde's Certification in Support of a Motion for a New Trial in which the May 21, 2007 date was referenced. See P-5.
    - During the investigative stage of these proceedings, Mr. Fram and Mr. Rosefielde testified, under oath, that Respondent appeared in the back of the courtroom for a second time on May 21, 2007. See P-18 at p. 116:13-19; see also P-20 at p. 39:13-21.
- Conversely, Mr. Jacobs and Mr. Barbone never contested the second date on which Respondent attended the trial until they testified at the Formal Hearing in this matter.
- Contrary to Mr. Poplar's testimony at the Formal Hearing that he saw Respondent in the courtroom when he testified as an expert in the Rosefielde Matter, Mr. Fram testified that when he spoke to Mr. Poplar after the trial ended, but before the Formal Complaint was filed in this

matter, Mr. Poplar expressed surprise over Respondent's attendance at the trial. 1T105-21 to 1T107-14; 2T36-14 to 2T37-5.

- Respondent testified that he could not have attended the trial on May 21, 2007 because he was involved in conferencing cases that day for trial. 2T156-18 to 2T159-20. However, the sole witness Respondent called in support of this claim, Mary Maudsley, Esq., testified inaccurately to this Committee regarding the time Respondent spent on the bench that morning and the time she spent with Respondent that morning. Respondent's Log of Proceedings for the morning of May 21, 2007 contradicts Ms. Maudsley's rendition of the events that morning. 2T14-12 to 2T19-16; see also J-9 [P-23/R-15].

    - Respondent's Log of Proceedings for the morning of May 21, 2007 shows a gap in time between 9:20 a.m. and 11:44 a.m. when Respondent was not on the bench. According to Ms. Maudsley, Respondent spent approximately an hour and fifteen minutes conferencing cases *after* he left the bench that morning. 2T18-15-24. Assuming Ms. Maudsley is correct regarding the hour and fifteen minutes she claims Respondent spent conferencing cases that morning, there remains a gap in time of approximately one hour (i.e. between 10:35 a.m. and 11:44 a.m.) between when Respondent left the bench at 9:20 a.m. and returned at 11:44 a.m. This gap in time coincides with Mr. Fram's and Mr. Rosefielde's observation of Respondent at the trial of the Rosefielde Matter that morning.

- Mr. Jacobs testified inaccurately to this Committee at the Formal Hearing when he stated that Mr. Fram did not raise the issue of Respondent's two appearances in the courtroom until six-months after the trial. Mr. Fram, in fact, raised the issue on June 18, 2007, the *week* in which the trial of the Rosefielde Matter had ended. 2T114-2 to 2T116-25; see also P-25.

- Mr. Jacobs also testified inaccurately regarding the length of time Respondent spent in the courtroom on each occasion. 2T116-25 to 2T117-18.

Regardless of how the Committee decides this credibility issue, however, Respondent concedes that his testimony, under oath, before the Senate Judiciary Committee about his conduct in the Rosefielde Matter was inaccurate in all other material respects. This inaccurate testimony coupled with Respondent's failure to correct the record after subsequently learning of

these inaccuracies violates Canons 1 and 2A of the Code of Judicial Conduct for which public discipline is necessary.

b. Respondent's Conversation with Plaintiffs' Counsel

Mr. Fram and Mr. Rosefielde were consistent in their testimony at the Formal Hearing about Respondent's conduct when he attended the trial of the Rosefielde Matter for a second time.[7] Both testified that during a break in the proceedings they witnessed plaintiffs' counsel and the plaintiff, Bruce Kaye, shake hands with Respondent, after which plaintiffs' counsel, Edwin Jacobs, boasted to Respondent about his lengthy examination of Mr. Rosefielde. 1T96-7-20; 1T143-15-25. In response to Mr. Jacob's boasting, Respondent was observed by Mr. Fram and Mr. Rosefielde to be laughing. Ibid. Mr. Fram's and Mr. Rosefielde's testimony is also consistent with a certification that Mr. Rosefielde had executed shortly after the trial ended in support of the defendants' Motion for a New Trial. See P-5 at ¶10. Mr. Fram testified that he drafted this certification on May 28, 2007, only *a week* after Respondent's second appearance at the trial. 1T98-18 to 1T99-9. The record is devoid of any evidence indicating that plaintiffs' counsel took issue with the substance of Mr. Rosefielde's certification.

Unlike Mr. Fram and Mr. Rosefielde, Respondent's and his witnesses' (i.e. Edwin Jacobs, Esq. and Louis Barbone, Esq.) versions of the events that day are inconsistent. Respondent and his witnesses claim that Respondent did not have any substantive conversations with counsel, but that he merely asked Mr. Barbone for an exhibit, which Mr. Barbone subsequently handed to him. 2T85-4 to 2T86-1; 2T100-14-22; 2T154-10 to 155-12. Respondent further claims that after examining the exhibit, he left the courtroom. 2T154-10 to

[7] At Respondent's request, the witnesses were sequestered during the hearing and thus Mr. Rosefielde was not present when Mr. Fram, who was Presenter's first witness, testified.

155-12. Respondent's testimony in this regard contradicts what *he* told this Committee in his written comments, dated October 22, 2008, wherein he claimed to have "approached Plaintiff's [sic] counsel to ask why he had taken a certain action in his examination of the witness . . . ." See P-8 at p. 4. In this regard, Mr. Barbone, likewise, contradicted Respondent's written comments to this Committee when he testified that Respondent said nothing to him except to ask for the exhibit. Ibid.; see also 2T85-4 to 2T86-1.

Similarly, Respondent's testimony at the Formal Hearing that he spoke with Paul D'Amato, Esq., who was purportedly seated in the audience when Respondent appeared at the trial for a second time, is inconsistent with Respondent's testimony to the Senate Judiciary Committee and his written comments to this Committee. 2T177-13-24; see also J-1 [P-4/R-3] at p. 6; P-8 at pp. 3-4; Stipulations at ¶25. Respondent testified, under oath, to the Senate Judiciary Committee and advised this Committee, in writing, that he spoke to no one in the audience during either of his appearances in the back of the courtroom. See J-1 [P-4/R-3] at p. 6; see also P-8 at pp. 3-4; Stipulations at ¶25.

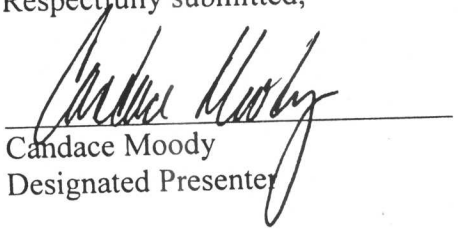
This Committee is thus left with a credibility determination as between Mr. Fram's and Mr. Rosefielde's version of events and Respondent's and his witnesses' version of events. The consistency with which Mr. Fram and Mr. Rosefielde testified on this issue as compared with the inconsistencies with which Respondent and his witnesses testified demonstrates, clearly and convincingly, that Mr. Fram's and Mr. Rosefielde's testimony has a greater indicia of credibility than that of Respondent and his witnesses.

III. CONCLUSION

The circumstances of this case call for public discipline. Respondent's conduct in failing to recuse himself from the Rosefielde Matter despite an admitted conflict of interest and

subsequently attending the trial on two separate occasions after having recused himself was egregious and injurious to the integrity and impartiality of the Judiciary. Likewise, Respondent's conduct in testifying inaccurately before the Senate Judiciary Committee coupled with his failure to correct those inaccuracies once he became aware of them impugned the integrity of the Judiciary and the public's perception of that integrity for which public discipline is warranted.

Respectfully submitted,



Candace Moody
Designated Presenter

Dated: September 7, 2010

TAB
1

Kaye v. Rosefielde
Docket No.
ATL-C-00017-05

October 6, 2006

The Court: Okay. Frank Siracusa is not, at least at this time, is not a party to this action. Moreover, from the moving papers that have been submitted it would appear to me that the issues that might relate to him or to his business that may be implicated in this case may not even require his testimony. Rather, it would appear that the relevance to this case of his status would be with regard to what actions were taken by the parties to this case and why.

Mr. Siracusa's testimony might not be helpful or even relevant to the determination of those issues. Even if he were to be called as a witness, my relationship with him in the past would not, in my view, preclude my making any necessary determinations with regard to his credibility…

I feel perfectly comfortable retaining responsibility for the matter even if Mr. Siracusa were to testify. The remaining issue on that aspect is whether on these facts there is an objective reason for me to recuse myself, that is does the record reflect facts that, if known to a disinterested observer, could cause that observer reasonably to conclude that my impartiality might be questioned if Mr. Siracusa were to appear in the matter as a witness. On the facts as presented before me I do not believe that that is the case. Defendant's Motion to Recuse is therefore denied, and I think I have an order to that effect.

Senate Judiciary Committee Testimony

October 16, 2008

Judge Perskie: When the matter was first presented to me, it was suggested that there was an individual [Siracusa] who was not a party to the case. He was neither a plaintiff nor a defendant, nor was he going to be a witness. His name was going to be used or referred to in the course of the testimony with respect to one or several issues. I indicated that if he, indeed, had been a party or a witness in the case that I would not hear the case. But because he was neither going to be a witness nor a party, there was no reason at that point that I should not hear the case. And at that point, on that basis, I declined to excuse myself from the case. Later on, for unrelated reasons having to do with matters that made me uncomfortable, on my own motion I excused myself from the case and it was assigned to another judge.